

W.P.(MD) Nos.7608 and 7609 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.04.2023

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

W.P.(MD) Nos.7608 and 7609 of 2023

and

W.M.P(MD) Nos.7076, 7077, 7082 and 7085 of 2023

TVL.Veera Agencies,
Rep. by Proprietrix Ganthimathi,
T.S.No.8506 & 8507, Shop No.115,
1st Vijay Palace, Sathyamurthy Road,
Pudukkottai-622001.

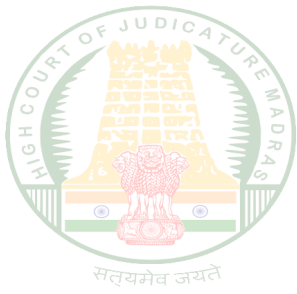
... Petitioner
(in both petitions)

Vs.

The Assistant Commissioner (St),
Pudukkottai-1 Assessment Circle,
Pudukkottai.

... Respondent
(in both petitions)

Common Prayer :- Petitions filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari, calling for records pertaining to the impugned assessment orders in GSTIN. 33BYUPG9589F1ZO/2019-20 dated 31.01.2023 and GSTIN. 33BYUPG9589F1ZO/2020-21 dated 08.02.2023 and quash the same as illegal and devoid of merits.



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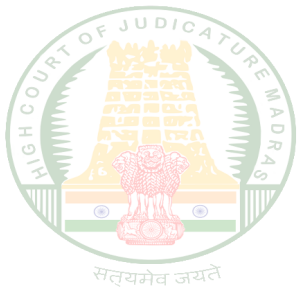
W.P.(MD) Nos.7608 and 7609 of 2023

For Petitioner : Mr.Raja.Karthikeyan

For Respondent : Mr.T.Amjadkhan
Government Advocate
(in both petitions)**COMMON ORDER**

The above writ petitions are filed seeking for the issuance of a writ of certiorari to quash the assessment orders passed by the respondent dated 31.01.2023 in GSTIN.33BYPG9589F1ZO/2019-20 (W.P(MD)No. 7608 of 2023) and dated 08.02.2023 in GSTIN. 33BYPG9589F1ZO/2020-21 (W.P(MD) No.7609 of 2023). The facts are identical in both the writ petitions and it is only the assessment year, that is different. W.P(MD) No.7608 of 2023 deals with the period 2019-20 and W.P(MD) No.7609 of 2023 deals with the period 2020-21.

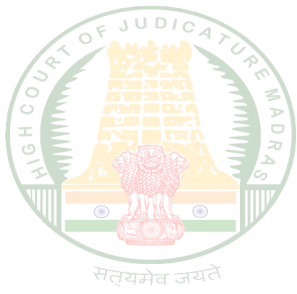
2. It is the case of the petitioner sole proprietary concern that they are dealing with lamps and light fittings insulated wire, cable and electronic conductors and labour and supply services. The petitioner has their place of business at T.S.No.8506 and 8507, Shop No.115, 1st Vijay Palace, Sathyamurthy Road, Pudukkottai-622 001. It is the case of the



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petitioner that one of the suppliers/sellers is one Star Agencies, who are carrying business at No.365-A, Mullai Nagar, Samathuvapuram (Via), Pudukkottai-622 001. This concern was inspected by the respondent and other officials on 05.01.2022 and they had confiscated certain records. Thereafter, the respondent had sent an intimation on 29.07.2022 alleging that the petitioner had indulged in non-existent trading and involved in bill trading activities. This conclusion was based on the transaction that the petitioner had with the Star Agencies where the petitioner had claimed ITC without original sale transaction. The petitioner would submit that this was explained to the Authority in person and in reply to the show cause notice dated 13.12.2022, vide the petitioner reply, dated 27.01.2023. It is the further case of the petitioner that in the reply, they had sought for personal hearing and the copies of the documents, which formed the basis for the show cause notice. However, without considering the reply, the impugned order came to be passed, which according to the petitioner, is in clear violation of principles of natural justice.

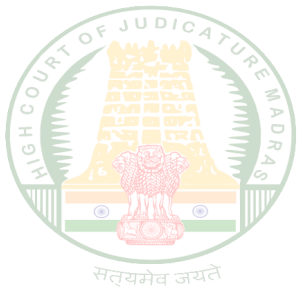


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3. That apart, the petitioner would submit that the contention of the respondent that the petitioner had claimed ITC in violation of Section 16(2)(b) of GST Act is absolutely incorrect. The further contention is that the petitioner had availed ineligible ITC in the monthly returns for the year 2019-20 and 2020-21 was wrong. In W.P(MD) No.7608 of 2023, the respondent had fixed the tax value through impugned order at Rs.30,08,364.92/- (CGST) and Rs.30,08,364.92/- (SGST) along with interest and penalty and in W.P(MD) No.7069 of 2023, the respondent had fixed tax value at Rs.18,97,851.63/- (CGST) and Rs.18,97,851.63/- (SGST) along with interest and penalty as applicable under Section 50(3) and 74 of the Act.

4. The petitioner would submit that the only reason for rejecting the ITC was that the place of business of the petitioner's seller was inspected on 05.01.2022 and the same was closed and GST registration was cancelled by the proper officer with effect from 27.06.2022. Therefore, the petitioner aggrieved by this proceedings has instituted the above writ petitions for mandamus. It is also the case of the petitioner

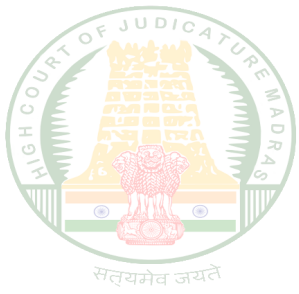


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that copy of the enquiry report, after inspection of the seller premises, has not been provided to the petitioner and that apart, even in the objection dated 27.01.2023, the petitioner had sought for personal hearing as well as the document in connection with the above show cause notice. Without considering this reply, the impugned orders came to be passed.

5. The learned counsel appearing for petitioner would further submit that the impugned orders have been passed without any basis. The respondent has not given an opportunity to the petitioner to put forth their case and that apart the assessment has been made on the basis of the documents, which have been seized from the third party premises. He would further argued that the third party has also accounted for all the transactions and has also paid the requisite tax in question. All these factors have been totally overlooked by the respondent, more particularly, they had not given an opportunity to the petitioner to submit their case.

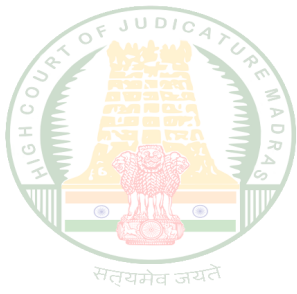


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6.Mr.T.Amjadkhan, learned Government Advocate appearing for the respondent would submit that a mere perusal of the impugned orders would show that the number of opportunities that have been granted to the petitioner, which have not been availed properly by the petitioner. That apart, the petitioner's objections have also been considered by the respondent before passing the impugned orders. He would further submit that the seller premises when inspected was found to be locked and in the local enquiry, it was revealed that the premises was being used as residence of the said proprietor of Star Agency and they were also informed that no business activities had taken place. Therefore, it is the contention of the learned Government Advocate that the transactions were only on paper in the form of invoices and actual sales had not taken place. He would further submit that the petitioner has an effective alternative remedy. Without exhausting the same, he has invoked the extraordinary jurisdiction of this Court.

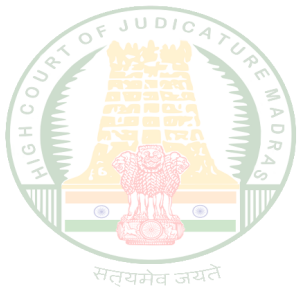
7.Heard the learned counsel appearing on either side.



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8.A perusal of the impugned orders would indicate that the petitioner had been issued with notices and also reminders for personal hearing. The orders of the respondent would also indicate that the petitioner has neither filed a reply online nor submit a manual reply. Despite the fact that he was given several opportunities to put forth his objections, the opportunity of personal hearing which was afforded has not been availed off by the petitioner. The petitioner has failed to prove that they complied with the condition eligible to claim input tax credit as per Section 16(2) of the Act on the purchase made from M/s.Star Agencies. The impugned orders set out the fake invoices under which ITC has been passed on to the recipient. It is also seen that the address of M/s.Star Agencies is not a shop at a residential building and the enquires would further show that no business was being carried from the said premises and that the proprietor of Star Agency, Periyaya, had vacated the premises early a year ago. Despite which, it is claimed that the business is being transacted in the said address and the petitioner cannot now state that he has not been given an opportunity to put forth



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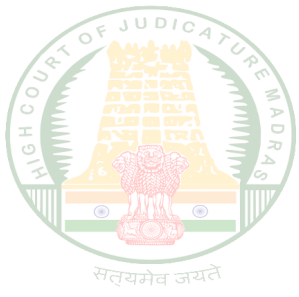
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his case. The argument advanced by the petitioner is purely factual and on the basis of the records, all of which cannot be considered by a writ Court.

9. Considering the fact that the petitioner has an effective appellate remedy, these Writ Petitions are dismissed directing the petitioner to file an appeal before the Deputy Commissioner (St). No doubt, the time for filing the appeal has expired. Considering the fact that the petitioner was bona fide prosecuting the proceedings before this Court, the Appellate Authority shall receive the appeal and condone the delay in filing the appeal, provided the appeal shall be filed within a period of two weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

18.04.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes
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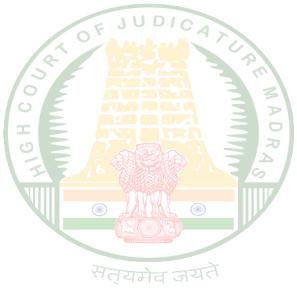


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To

The Assistant Commissioner (St),
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Pudukottai.



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P.T.ASHA, J.

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